United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1907. 481

No. 1769.

FRANCIS L. CARDOZO, APPELLANT,

vs.

GEORGE W. BAIRD, OLIVER M. ATWOOD, JOHN F. COOK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MARCH 18, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1907.

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GEORGE W. BAIRD, OLIVER M. ATWOOD, JOHN F. COOK, WILLIAM V. COX, BARTON W. EVERMANN, JUSTINA R. HILL, ELLEN SPENCER MUSSEY, JAMES F. OYSTER, AND MARY C. TERRELL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 19, 1907.

In the Court of Appeals of the District of Columbia.

No. 1769.

FRANCIS L. CARDOZO, Appellant,
vs.
GEORGE W. BAIRD ET AL.

a Supreme Court of the District of Columbia.

Equity. No. 26833.

FRANCIS L. CARDOZO, Complainant,
against
GEORGE W. BAIRD, OLIVER M. ATWOOD, JOHN F. COOK, WILLIAM V. COX, BARTON W. EVERMANN, JUSTINA R. HILL, ELLEN SPENCER MUSSEY, JAMES F. OYSTER, and MARY C. TERRELL, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill of Complaint.*

Filed January 26, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26833.

FRANCIS L. CARDOZO, Complainant,
against
GEORGE W. BAIRD, OLIVER M. ATWOOD, JOHN F. COOK, WILLIAM V. COX, BARTON W. EVERMANN, JUSTINA R. HILL, ELLEN SPENCER MUSSEY, JAMES F. OYSTER, and MARY C. TERRELL, Defendants.

The complainant states as follows:

1. He is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.

2. The defendants are citizens of the United States and residents of the District of Columbia, and claim and profess to constitute the Board of Education of the District of Columbia, so called, and as such to be vested with the control of the public schools of the District of Columbia under and by virtue of the certain pretended act of Congress of the United States known as Public No. 254, and purporting to have been approved June 20, 1906, and the said defendants are sued as so claiming to constitute and be the said Board of Education.

3. By the said pretended act of the Congress of the United States the control of the public schools of the District of Columbia was pretended to be vested in a Board of Education, so called, to consist of nine members to be appointed by the Supreme Court Judges of the said District, and thereafter the said Judges purported to
2 appoint the defendants members of the said Board, and the defendants thereafter assumed and undertook to organize as the said Board, and since have been and now are claiming to be the same under the provisions of the said pretended act.

4. In and by the said pretended act it is among other things provided that the said pretended Board of Education shall appoint one superintendent for all the public schools in the District of Columbia who shall have a seat in the Board and the right to speak on all matters before the Board, but not the right to vote; that the said Board upon the written recommendation of the said superintendent shall also appoint one colored assistant superintendent for the colored schools who shall under the direction of the superintendent have sole charge of all teachers, classes and schools in which colored children are taught; that no appointment, promotion, transfer or dismissal of any director, supervising principal, principal, head of department, teacher, or any other subordinate of the Superintendent of Schools shall be made by the said Board except upon the written recommendation of the said superintendent; and that when a teacher is on trial or being investigated, he or she shall have the right to be attended by counsel and by at least one friend of his or her selection.

5. Under and by virtue of their pretended authority in that behalf the defendants so as aforesaid professing and claiming to be the said Board of Education prior to September 1, 1906, pretended to appoint as and for superintendent for all the public schools in the District of Columbia as aforesaid one William E. Chancellor
3 who undertook to assume and, in fact, assumed the said office, and who continuously since has been and now is claiming to be said superintendent; and during all the time last aforesaid one Winfield Scott Montgomery has pretended and assumed to be the colored assistant superintendent for the colored schools of the said District as aforesaid.

6. The complainant since to wit, September 1, 1890, has been respectively a teacher and principal in, of and for the said public schools as follows: On to-wit, September 1, 1890, he was appointed as grade teacher at and for the Mt. Pleasant School, at a salary of four hundred dollars ($400) per annum; on to-wit,

December 1, 1890, he was promoted to the grade of principal at and for the Montello School, at a salary of five hundred dollars ($500) per annum which on to-wit, September 1, 1891, was increased to six hundred and fifty dollars ($650) per annum; on to-wit, September 1, 1892, he was promoted to the grade of principal at and for the Grant Road School at a salary of seven hundred and fifty dollars ($750) per annum which on, to-wit, September 1, 1893, was increased to seven hundred and seventy-five dollars ($775) per annum, and on to-wit, September 1, 1894, was further increased to eight hundred and twenty-five dollars ($825) per annum; on to-wit, October 15, 1896, he was promoted to the grade of principal at and for the Wilson School at a salary of eight hundred and twenty-five dollars ($825) per annum, and made principal of the Wilson night school at a compensation of two dollars and a half ($2.50) per night, which said last mentioned salary
4 was on to-wit, September 1, 1898, increased to nine hundred dollars ($900) per annum, and on to-wit, September 1, 1899, increased to one thousand dollars ($1,000) per annum; on to-wit, September 1, 1902, he was promoted to the grade of principal at and for the Stevens School at a salary of eleven hundred dollars ($1100) per annum, and also made assistant director of the night schools of the said District at a compensation of three dollars and a half ($3.50) per night; on to-wit, May 24, 1904, he was promoted to the grade of supervising principal of the Thirteenth Division of the said public schools at a salary of two thousand — ($2,000) per annum, which last mentioned position he continuously since has held and now holds; and on to-wit, September 4, 1906, upon the recommendation of the said Chancellor, claiming to be superintendent as aforesaid, the defendants, with the exception of the defendant Mussey whose pretended appointment as a member of the said Board had not then been made, purported to appoint and continue the complainant as supervising principal as aforesaid at a salary of twenty-two hundred dollars ($2200) per annum.

7. On to-wit, January 14, 1907, the said Winfield Scott Montgomery in the assumed office and character of colored assistant superintendent as aforesaid, and the said William E. Chancellor in the assumed office and character of superintendent of schools as aforesaid preferred and presented to the defendants so as aforesaid professing and claiming to be the Board of Education of the District of Columbia aforesaid certain charges and specifications charging the complainant as supervising principal as afore-
5 said with conduct unbecoming a supervising principal and violating the rules numbered 22, 29, 60, 62 and 65 of the Rules and By-laws of the Board of Education of the District of Columbia, which Rules and By-laws had been adopted by the Board of Education of the District of Columbia in existence at and prior to the date of the said pretended act of the Congress of the United States aforesaid, to-wit, June 20, 1906, and had been continuously in force and effect since their adoption, that is to say since to-wit, September 1, 1905, except that the same have professed to be amended by the defendants in certain particulars, not, however, as

to any one of the said rules numbered 22, 29, 60, 62 and 65. The complainant files herewith as part of this his bill of complaint and prays to be read at any hearing thereof a true copy of the said charges and specifications marked "Exhibit No. 1," and a true copy of the said rules numbered 22, 29, 60, 62 and 65, marked "Exhibit No. 2."

8. Upon the presentation of the said charges and specifications to the defendants as aforesaid, the complainant was by the said defendants so as aforesaid professing and claiming to be the Board of Education of the District of Columbia notified thereof and that he would be tried thereupon pursuant to Section 10 of the said pretended act of the Congress of the United States, and upon and pursuant to such notice the complainant appeared before the said defendants on to-wit, January 23, 1907, and in his proper person then and there formally objected to the right and jurisdiction of the defendants to try him the complainant upon the said charges and specifications upon the expressed ground that the de-
6 fendants purporting to constitute the said Board of Education were and are without authority in law or in fact either to present or to try the said alleged charges for the reasons that the said Board, so called, claims and professes to have been appointed by the Supreme Court Judges of the District of Columbia under the certain act aforesaid, and that the said act in so far as it professes to provide for the appointment of the said Board is unconstitutional and void in that it undertakes to vest in a branch or members of the Judiciary Department of the United States the appointment of officers executive in their character, but having no place in or relation to the said Judiciary Branch. The complainant files as part of this his bill of complaint and prays to be read at any hearing thereof a true copy of his said objection, marked "Exhibit No. 3."

9. Upon the presentation and submission of his said objection to the defendants as aforesaid, the same was overruled and for nothing held by the defendants, who thereupon, professing and claiming to be the Board of Education as aforesaid, called upon the complainant to plead to the said charges and specifications, whereupon the complainant still in his proper person moved that the charges aforesaid, together with their specifications, be dismissed as uncertain, vague and insufficient in either law or fact upon certain grounds then and there by the complainant stated. The complainant files as part of this his bill of complaint and prays to be read at any hearing thereof a true copy of his said motion and the grounds thereof, marked "Exhibit No. 4."

7 10. Upon the presentation of his said motion, the same was overruled and for nothing held by the defendants, who again, claiming and professing to be the Board of Education as aforesaid, called upon the complainant to plead to the said charges and specifications, and the complainant thereupon pleaded to each of the said charges and specifications *not guilty*, and the defendants, professing and claiming to be the Board of Education as aforesaid, undertook and assumed to try the complainant on the said charges

and specifications, and entered upon and are now engaged in the trial thereof, and unless restrained by this Honorable Court will proceed with such trial and adjudge the complainant in respect of the said charges and specifications.

11. The complainant is advised and therefore avers that the said pretended act of the Congress of the United States in so far as it purports to create or establish a Board of Education for the District of Columbia is unconstitutional and void in that the public schools of the District of Columbia are part of the administrative or executive system of the said District exclusively, having no relation to or connection with the judicial system of the same; that the said pretended act nevertheless purports to vest the appointment of the said Board of Education not in any officer or officers having to do with the said administrative system of the District of Columbia and not in any court or other official body, but in the certain persons in and by the said pretended act designated and described as "Supreme Court Judges of the District of Columbia;" that there
8 are not in law any such persons known as "Supreme Court Judges of the District of Columbia;" and that if it were the purpose and intent of the said pretended act to mean by the "Supreme Court Judges of the District of Columbia" the Supreme Court of the District of Columbia, it was and is beyond the constitutional right and power of the Congress of the United States to vest in the said court the appointment of officers having no connection with or relation to the said court or the administration of justice in the District of Columbia, but having relation to and being connected exclusively with the administration of the public schools of the District of Columbia so as aforesaid part of the administrative or executive system of the said District.

12. The complainant is further advised and therefore avers that it was not the intent and is not the effect of the said pretended act of the Congress of the United States to abolish the corps or body of the teachers of the public schools of the District of Columbia as the said corps or body was composed and constituted at the date of the said pretended act, and accordingly that without regard to any of the provisions of the said pretended act or any action of the defendants pretending to be the Board of Education as aforesaid, the complainant continued after the date of the said pretended act to be as he had been since to-wit, May 24, 1904, supervising principal as aforesaid, and that he is not and never has been subject to the authority or jurisdiction of the defendants so as aforesaid unlawfully claiming and professing to be the Board of Education of the District of Columbia.

13. The complainant is further advised and therefore avers that
9 even though the defendants in law constitute the said Board of Education of the District of Columbia, the certain alleged charges and specifications aforesaid do not nor does any one of them set forth any matter or thing in violation of the rules numbered 22, 29, 60, 62 and 65 aforesaid, or any of them, and that there is no offense known either to the law or to the said Rules and By-laws of the Board of Education of the District of Columbia as

"conduct unbecoming a supervising principal;" notwithstanding which the defendants have as aforesaid asserted and are now asserting an authority and right to try the complainant as though the said charges and specifications or some of them do set forth against the complainant matter of offence.

14. The complainant as a teacher and principal and supervising principal in and of the public schools of the District of Columbia as aforesaid has justly earned and achieved a reputation for learning and skill in his calling, and has moreover justly earned a character as a good and honorable man and citizen of the District of Columbia, and the complainant's said office as supervising principal as aforesaid is a position of trust and profit yielding him an annual income of to-wit, twenty-two hundred dollars ($2200), and the said office is accordingly of great value to the complainant both morally and financially, and by his deprivation thereof the complainant would suffer irreparable damage both in his character and financially.

The premises considered, the complainant therefore prays as follows:

First. That process may issue to the defendants and each of them commanding them and each of them to appear *to* and answer
10 the exigency of this bill of complaint.

Second. That both during the pendency of this cause and on the final hearing thereof the defendants and each of them may be restrained and enjoined from claiming to be the Board of Education of the District of Columbia or members or a member thereof.

Third. That the defendants and each of them may both during the pendency of this cause and on the final hearing thereof be restrained and enjoined from undertaking to try the complainant on the charges and specifications aforesaid or any of them, or any otherwise in the premises.

Fourth. That the complainant may have such other and further relief in the premises as the nature of the case may require.

The defendants to this bill of complaint are George W. Baird, Oliver M. Atwood, John F. Cook, William V. Cox, Barton W. Evermann, Justina R. Hill, Ellen Spencer Mussey, James F. Oyster and Mary C. Terrell.

FRANCIS L. CARDOZO,
Complainant.

HENRY E. DAVIS,
JAMES A. COBB,
Solicitors for the Complainant.

DISTRICT OF COLUMBIA, *ss:*

Before me, a Notary Public in and for the District aforesaid, personally appeared Francis L. Cardozo, who being by me first duly sworn, deposes and says that he has heard read the foregoing bill by him subscribed and knows the contents thereof, and that the
11 matters and things therein stated of his own knowledge are true, and those stated on his information and belief he believes to be true.

FRANCIS L. CARDOZO.

Subscribed and sworn to before me this 25th day of January, 1907.

EDWARD B. KIMBALL,
Notary Public, D. C.

[SEAL.]

12 EXHIBIT No. 1.

Filed January 26, 1907.

Before the Board of Education of the District of Columbia.

To the Board of Education of the District of Columbia:

I hereby charge Francis L. Cardozo, Supervising Principal, Thirteenth Division of the Public Schools, with conduct unbecoming a supervising principal, and violating rules 60, 62 and 65 of the Rules and By-Laws of the Board of Education of the District of Columbia, and consisting in this

Specification

In that the said Francis L. Cardozo, Supervising Principal, 13th Division of the Public Schools, to the prejudice of the good order and administration of the public schools, during the present scholastic year and prior to the 17th day of October, 1906, did write, utter and publish, of and concerning W. S. Montgomery, Colored Assistant Superintendent of the Public Schools, and his immediate superior officer, a certain false anonymous libel of the tenor following, that is to say:

Please Publish Today.

To the Editor (For the Times exclusively):

It is learned that the publication in the Times of last Friday that Dr. Montgomery, Asst. Supt., in charge of colored schools, had violated the instructions of Supt. Chancellor in recommending deficient teachers for reappointment has subjected him to severe criticism from the colored people who had confidentially hoped
13 that under the new regime the public school system would be relieved of those teachers who are notorious failures. They are interested now in knowing whether Dr. Montgomery has friends to reward and enemies to punish in the school. It is well known that the retention of such teachers as John W. Cromwell, Addie Howard, Laura Fisher, Sarah Spencer, Parthenia Woodson, Ursuline Brooks, and others rated "Fair" or "Poor" for years by different supervisors has prevented the colored schools from reaching their highest efficiency, and it would seem that Dr. Montgomery intends being their savior in the future if he has not been in the past.

The argument that teachers should be retained because of their influence and activities outside of the school room despite lack of teaching ability is looked upon as a dangerous one, for it is stated if such considerations are to be taken into account it will be im-

possible to accurately estimate a teacher's worth, inasmuch as many who are rank failures will begin at once to "get busy" in church and society, in order to forestall any effort to get them out of the schools. It is felt that teachers should be retained because of being educational experts rather than for their civic force. Many are interested in knowing what teachers have been saved in order "to avoid embarrassing members of the Board of Education."

Colored citizens generally feel that Dr. Atwood is rendering an immense service, by demanding a searching investigation into the matter.

——— ———,
Subscriber.

14 *Charge II.*

I hereby further charge Francis L. Cardozo, Supervising Principal, 13th Division of the Public Schools, with conduct unbecoming a supervising principal in violating rules 22, 29, 60, 62 and 65 of the Rules and By-Laws of the Board of Education of the District of Columbia, and consisting in this

Specification.

In that the said Francis L. Cardozo, to the prejudice of the discipline of the public schools, and to the end of inciting disaffection, strife and arousing resentment among teachers of the said public schools, did injuriously attack and openly defame certain teachers of the said public schools, to wit, John W. Cromwell, Addie Howard, Laura Fisher, Sarah Spencer, Parthenia Woodson and Ursuline Brooke, by writing, uttering and publishing to the public press the certain anonymous libel as particularly described and above set forth in the first charge herein.

Charge III.

I further charge the said Francis L. Cardozo, Supervising Principal of the 13th Division of the Public Schools of the District of Columbia, with conduct unbecoming a supervising principal, and violating rules 60, 62 and 65 of the Rules and By-Laws of the Board of Education, and consisting in this

Specification

In that the said Francis L. Cardozo, Supervising Principal, 13th Division of the Public Schools, during a period of time to wit from the 12th day of September 1906 to the 17th day of October, 1906, did publicly unfavorably criticize W. S. Montgomery, Colored
15 Assistant Superintendent of Public Schools, and thereby attempt to disturb the discipline, loyalty and harmonious administration of the said schools.

Charge IV.

I hereby further charge said Francis L. Cardozo, Supervising Principal, 13th Division of the Public Schools of the District of Columbia, with conduct unbecoming a supervising principal, and violating Rule 65 of the Rules and By-Laws of the Board of Education, consisting in this

Specification.

In that said Francis L. Cardozo, Supervising Principal of the 13th Division of the Public Schools, on or about to wit the 16th day of October 1906, in an interview with the Superintendent of Schools, and in the office of the said Superintendent, was insubordinate to the directions of the said Superintendent and did refuse to co-operate with the said Superintendent, and did refuse and decline to recognize the said colored Assistant Superintendent as a proper and fit person for his position.

The above charges preferred by *Winfield S. Montgomery* Colored Assistant Superintendent.

Very respectfully submitted.

WILLIAM E. CHANCELLOR,
Superintendent of Schools.

16 *Notice of Trial.*

To Francis L. Cardozo, Supervising Principal, 13th Division.

SIR: Take notice that the foregoing charges have been preferred against you and that your trial upon said charges, pursuant to Section 10 of the Act of Congress approved June 20, 1906, will take place before the Board of Education of the District of Columbia, in the Franklin School Building, in the City of Washington, in said District on the 19th day of January, 1907, at two o'clock, P. M. and will be continued from day to day until the said trial is concluded.

THE BOARD OF EDUCATION,
By GEORGE W. BAIRD, *President.*

I admit due personal service of a copy of the above complaint, charges, specifications, and notice of trial, this 14, day of January, 1907.

A true copy.
Attest:
WILLIAM W. CONNER,
Jan'y 14, 1907.

17

Exhibit No. 2.

Filed January 26, 1907.

Rules for the Government of the Public Schools of the District of Columbia.

* * * * * * *

Ratings of teachers.—22. The superintendent shall cause to be prepared annually in the month of June a complete list of teachers, arranged by grades or according to their special schools or departments and in order of merit. The order of merit shall be established by efficiency reports rendered not later than June 1 and in the following manner: In the normal schools by the principal thereof; in the high schools and the manual training schools by the principals; with the approval of the respective directors; in all special departments, including the kindergartens, by the directors of same, and in the graded schools by the supervising principals. In the first three grades the supervising principal shall be aided in his judgment of the teachers' standing by the reports of the director of primary instruction. Teachers shall be rated as "excellent," "good," "fair," "poor." These ratings, when approved by the as-

18 sistant superintendents and the superintendent, shall be consolidated, and in making promotions the Board shall select the teacher whose standing is higher than that of any other teacher of the same grade or special school or department. Should there be two or more teachers of equal merit, the length of service shall govern the promotion.

* * * * * * *

Must learn the rules.—29. Each teacher is required to make himself familiar with the rules and to faithfully observe the same, and to see that pupils are fully informed as to their duties.

* * * * * * *

Responsible for enforcement of rules.—60. Each supervising principal shall, under the direction of the superintendent, be responsible for the observance and enforcement of all school rules. He shall have an office, to be located by the superintendent.

* * * * * * *

Shall endeavor to improve methods of instruction.—62. He shall endeavor to improve the methods of instruction, under the direction of the superintendent, and shall make such reports as may be required of him by the superintendent.

* * * * * * *

Shall see that all teachers are advised as to rules.—65. The supervising principal shall see that all teachers within his jurisdiction are promptly notified and duly advised as to all rules and orders

19 pertaining to the schools and will be held responsible for the impartial enforcement of such regulations. He shall see

that all the prescribed records are neatly, regularly, and correctly kept by the teachers, and that all reports and returns required by the Board of Education, the Secretary of the Board, or the superintendent are promptly made. He shall under the direction of the superintendent classify the pupils in the various grades; shall visit each school as often as practicable, and shall in every way possible co-operate with the superintendent.

Shall classify pupils and visit schools.

20 EXHIBIT No. 3.

Filed January 26, 1907.

Before the Board of Education of the District of Columbia.

In the Matter of Certain Alleged Charges Against FRANCIS L. CARDOZO, Supervising Principal, Thirteenth Division of the Public Schools.

Comes now the above named Francis L. Cardozo in proper person and objecting to the authority and jurisdiction of the above named Board of Education, so called, says that the same is without authority in law or in fact either to present or to try the said alleged charges for the reason that the said Board, so called, claims and professes to have been appointed by the Sepreme Court Judges of the District of Columbia under the certain act of the Congress of the United States known as Public Number 254, approved June 20, 1906, which said act in so far as it professes to provide for the appointment of the said Board is unconstitutional and void in that it undertakes to vest in a branch or members of the Judiciary Department of the United States the appointment of officers executive in their character and having no place in or relation to the said Judiciary Branch.

Wherefore the said Francis L. Cardozo prays judgment whether he ought to make any other or further answer in the premises and that he be hence dismissed.

21 EXHIBIT No. 4.

Filed January 26, 1907.

Before the Board of Education of the District of Columbia.

In the Matter of Certain Alleged Charges Against FRANCIS L. CARDOZO, Supervising Principal, Thirteenth Division of the Public Schools.

Comes now the above named Francis L. Cardozo and filing herewith copies of Rules numbered 22, 29, 60, 62 and 65 of the Rules of the Board of Education of the District of Columbia, moves that the certain above mentioned charges together with their specifications

be dismissed as uncertain, vague and insufficient in either law or fact upon the following among other grounds:

1. There is no such offence known to the law or to the Rules and By-laws of the Board of Education of the District of Columbia as "Conduct unbecoming a supervising principal," and there is no law or rule defining the acts constituting such conduct, and the allegation of such conduct on the part of the respondent fails to inform him with what acts he is charged as constituting the conduct aforesaid.

2. There is no provision of Rules 60, 62 and 65 of the Rules and By-laws aforesaid, or of any of them, in respect of which the specification of the first of the said charges sets forth any alleged offence on the part of the respondent.

22 3. There is no provision of Rules 22, 29, 60, 62 and 65 of the said rules or of any of them in respect of which the specifications of the second of the said charges sets forth any alleged offence on the part of the respondent.

4. There is no provision of Rules 60, 62 and 65 of the rules aforesaid, or of any of them, in respect of which the specification of the third of the said charges sets forth any alleged offence on the part of the respondent.

5. There is no provision of Rule 65 of the said rules in respect of which the specification of the fourth of the said charges sets forth any alleged offence on the part of the respondent.

6. The said charges do not nor does any one of them allege against the respondent any act or acts anywhere or by any authority defined to be "conduct unbecoming a supervising principal."

Wherefore the respondent says that the said charges and specifications are and each of them is wholly insufficient either in law or in fact, and that he ought not to be required to make any other or further answer thereto, and prays that he may be hence dismissed.

23 *Answer of Defendants.*

Filed February 4, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26833.

.. FRANCIS L. CARDOZO, Complainant,

vs.

GEORGE W. BAIRD ET AL., Defendants.

The answer of the defendants to the rule to show cause and the bill filed herein.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefits and exceptions which may be taken or raised to the numerous errors, imperfections and deficiencies of the said bill, and especially reserving to themselves

the right to raise and object to at the hearing and at all times hereafter, all questions of law such as could be raised by a demurrer, and especially reserving to themselves and insisting on the lack of any jurisdiction of this court to entertain the said bill or grant any relief prayed therein, or any relief whatever, and reserving the right to object to the right or the capacity of the complainant to maintain this proceeding, or the jurisdiction of this court in the premises the same as if a demurrer specifically raising these grounds or any other legal grounds had been interposed, nevertheless, for answer to the said bill, or to so much as may be material, these defendants, answering, say:

1. They admit the allegations of the first paragraph as to
24 citizenship and residence of complainant, and as to the institution of the suit in his own right in so far as he is acting individually, but deny that he has any right or capacity to institute the said suit whatever.

2. They admit the allegations of the second paragraph with respect to their citizenship and residence, and as to the remaining allegations of the said paragraph say that the same as pleaded in said bill are untrue, but that on the contrary these respondents collectively are and do constitute the Board of Education of the District of Columbia both *de jure* and *de facto,* and as such are vested with the control of the public schools of the said District under and by virtue of the certain act of the Congress of the United States known as public act No. 254, approved June 20, 1906.

3. With regard to the third paragraph of said bill these defendants say that not in the manner as stated in said paragraph, but that by the certain act of Congress of the United States approved June 20, 1906, the control of the public schools of the District was vested in a Board of Education consisting of nine members to be appointed by the Sureme Court Judges of the District of Columbia, and that thereafter, to wit, on July 3, 1906, these defendants, save the defendant Mussey, who was subsequently thereafter appointed, were all duly appointed and thereafter did in fact organize as said Board of Education; since then they have been and are now the said Board of Education provided for by the said act.

4. These defendants say they are advised that the fourth
25 paragraph of said bill imports matters of law to which they are not called upon to make answer.

5. As to the allegations of the fifth paragraph of the bill these defendants say that not as pleaded in the said fifth paragraph, the same in so far as it is pleaded in that manner being untrue, but as a matter of fact and of authorization in law, they did, heretofore, to wit, prior to September 1, 1906, legally appoint as and for the superintendent of all the public schools in the said District, the said William E. Chancellor who accepted the said appointment, assumed the said office, and who continuously has been and now is the said superintendent provided for by the act, both *de jure* and *de facto;* and that further these defendants did appoint one Winfield Scott Montgomery as colored assistant superintendent for the colored schools of the said District, and the said Montgomery has accepted

the said appointment and assumed the said office and continuously has been and now is the said colored assistant superintendent, both *de jure* and *de facto as* provided for by the said act.

6. As to the allegations of the sixth paragraph of the bill these defendants say that in so far as they are advised, the same are true, save the allegations toward the end of the said sixth paragraph, that on, to wit, September 4, 1906, upon the recommendation of the said Chancellor claiming to be the said superintendent the defendants, with the exception of the defendant, Mussey, whose pretended appointment as a member of the said Board had not then been made, purported to appoint and continue the complainant as super-
26 vising principal, etc., as to which allegations in manner and form as pleaded these defendants say the same are untrue. The truth and the fact is that under and by virtue of the authority reposed in these defendants by the certain act of Congress approved June 20, 1906, they did, on, to wit, September 4, 1906, upon the written recommendation of the said superintendent, appoint and continue the complainant as supervising principal at the salary provided for in the said act, and not at the salary the said complainant had previously received, and that the said complainant duly recognized these defendants as the said Board of Education, duly accepted the said appointment, duly took his oath of office under the said appointment, entered upon his duties, and from that time continuously has been and now is an employee of the said Board; since that time has been and now is receiving his salary authorized to be paid to the said complainant by the said appointment of these defendants as the said Board.

7. Defendants admit the allegations of the seventh paragraph of the said bill save as to the manner of pleading the same in that the said Montgomery in the assumed office and character of colored assistant superintendent and the said Chancellor in the assumed office and character of superintendent of schools, preferred to these defendants, professing and claiming to be the Board of Education, etc., certain charges, etc., as to which these defendants say that the said Montgomery and the said Chancellor, in their offices respectively, did present the certain charges to these defendants as a Board, both *de jure* and *de facto* under the authority of the certain act of Congress approved June 20, 1906.

27 8. As to the allegations of the eighth paragraph these defendants admit the averments of fact in that the complainant was notified in due form that he would be tried pursuant to section 10 of the act of Congress approved June 20, 1906, and the allegation touching the action of the complainant in the premises thereafter; but as to the other allegations of the eighth paragraph importing questions of law, these defendants say that they are advised that they are not obliged to make answer, but reserve the same for the decision of the court.

9. These defendants admit the allegations of the ninth paragraph as to the action of the complainant in the premises, regardless of the averment of any matters of law, as to which they submit they are not obliged to make answer.

10. They admit the allegations of the tenth paragraph that after the overruling of the said motions the said Board called upon the complainant to plead to the said charges and specifications, and that the complainant did plead not guilty as to each and all thereof, and that these defendants, as the Board of Education, did undertake and proceed to try the said complainant under the said charges and specifications, as they are advised they are authorized by the said act of Congress approved June 20, 1906, and by the provisions of law, so to do. These defendants say they are advised that the control of the public schools of the District of Columbia vested in them as the Board of Education of the said District, and that they are authorized to determine the policy of the said schools and also authorized to place on trial or under investigation any person in the em-
28 ploy of the said schools, and as a result of said trial or investigation, to judge the guilt or innocence of any such person so tried.

11. The allegations of the eleventh paragraph of the said bill import matters of law which these defendants are advised they are not required to make answer; but nevertheless state that they are advised that the said act approved June 20, 1906, is not unconstitutional and void in that it creates the Board of Education of the District of Columbia and authorizes the appointment of the members of the said board by the Supreme Court judges of the District of Columbia, for that they submit that the Supreme Court judges of the District of Columbia are known and ascertainable individuals of a definite number provided for by law and in legal and actual existence; that the said Supreme Court judges of the District of Columbia so as aforesaid known, contemplated and recognized by law, constitute the Supreme Court of the District of Columbia; that the said Supreme Court is a court of law of the said United States; that under and by virtue of Article 2, Section 2 of the Constitution of the United States Congress is authorized to vest the appointment of such inferior officers as it may deem fit in the courts of law, and accordingly is authorized to provide for the appointment of these respondents as in the Act of June 20, 1906.

These defendants further say that under and by virtue of article 1, section 8 of the Constitution of the United States, the Congress of the said United States is authorized to exercise exclusive legislation in all cases whatsoever over such District as may by cession
29 of particular states and the acceptance of Congress, become the seat of the government of the United States, and to make all laws which shall be necessary and proper for carrying into execution the foregoing power; that under and by virtue of said provision the Congress of the United States has exclusive jurisdiction and control of the said District of Columbia; that in the said District of Columbia there is not an absolute or necessary division of the powers of government into the executive, legislative and judicial, but that on the contrary the same are under the immediate or indirect control of the Congress; that the Supreme Court of the District of Columbia, being a court of law of the said United States, is under its control, having been created by the said Congress of the United

States; that the power of appointment to office and positions in the said District of Columbia is found in the executive department of the national government only in so far as it is specifically placed in said department by the will of Congress; that there is no right in the complainant or in any resident of the District to question the exercise of the act of Congress in its exclusive control of the said District save in so far as such act or acts of Congress may contravene the fundamental rights of life, liberty, property or due process of law guaranteed to all citizens of the United States, or those residing in territories subject to its jurisdiction; and that in its exclusive control of the government of the said District of Columbia the Congress of the said United States is empowered to apportion and locate the appointment of inferior officers in the District of Columbia and the regulation of the internal government of the District of Columbia in such wise as it may deem fit and expedient, and without regard to the coördination of such power of appointment and regulation of municipal economy with the legislative, executive and judicial departments provided for in the national and state governments.

12. As to the allegations of the twelfth paragraph of the bill that it was not the intent of Congress by its certain act approved June 20, 1906, to abolish the corps or body of teachers of the said schools of the said District as the same was constituted at the date of the passage of the said act, these defendants submit that the same call for an opinion of matter of law, and that they are not obliged to answer or furnish the same, but state that the remaining allegations of the said paragraph are untrue in that the complainant, independently of the said act, or of any action of these defendants, as the Board of Education, continued such supervising principal as he had been since, to wit, May 24, 1904, the truth and the fact being that on, to wit, September 4, 1906, these defendants duly appointed and continued the said complainant as supervising principal under a different system and at a different salary, the said salary being an increase over his previous salary and being alone authorized by the said act of June 20, 1906, under which said act these defendants were put into existence as the said Board. The allegations in the said paragraph that he, the said complainant, is not and never has been subject to the authority or jurisdiction of the defendants acting as said Board, these
31 defendants submit are untrue. On the contrary they state that since, to wit, the 4th day of September, 1906, the complainant has continuously been subject to the authority and jurisdiction of these defendants as a Board, and has continuously recognized them as the said Board; has received his salary under their authorization and in all his duties as supervising principal has acted under the expressed and implied recognition of their existence as the said Board of Education *de jure* and *de facto*. Furthermore, on, to wit, the 25th day of October, 1906, the said complainant filed in the Supreme Court of the District of Columbia a petition for a writ of mandamus against these respondents as the Board of Education wherein, under oath, the complainant swore that the said

respondents, the defendants herein, were duly appointed pursuant to the act approved June 20, 1906, and at that time were, and previously thereto had been, the said Board of Education provided for in the said act, the said proceedings being known as United States *ex rel.* Francis L. Cardozo *v.* George W. Baird *et al.*, No. 48890, Supreme Court of the District of Columbia, and reference to which, both as to the petition and subsequent proceedings and orders in the said cause, is herewith made, and in so far as they may be in any wise material are prayed to be read and taken and considered as a part of this proceeding. And pursuant to the judgment of the court in the said cause that the writ of mandamus issue to these defendants as a Board of Education requiring them, as said Board, to reinstate complainant, these defendants state that they did, on, to wit, December 24, 1906, reinstate the said
32 complainant and that he accepted the same, and they are advised that he is estopped from questioning the legality or existence of these defendants as the said Board by reason of the premises, if not otherwise by his actions since the date of his appointment and continuance by the Board on, to wit, September 6, 1903.

13. Defendants state they are advised not to further answer the allegations of the thirteenth paragraph of said bill save in so far as to state that by reason of the said thirteenth paragraph the said bill is multifarious, inconsistent and repugnant; that the said complainant cannot in and by said bill contend that the said defendants have no legal right to try him at all as they are not the Board of Education, and in the same bill to contend that the charges and specifications on which the said Board is trying the said complainant, do not import any matter or offense for which the said complainant can be tried.

14. The allegations of the fourteenth paragraph of said bill these defendants state are immaterial and irrelevant and they do not make further answer to the same.

Further answering the said bill these defendants state that the complainant has not shown any right, title or interest to exhibit the said bill, or to secure any restraining or injunctive order against the defendants in the premises; that these defendants have been duly appointed pursuant to the act of Congress approved June 20, 1906, and are therefore the Board of Education *de jure* of the District of Columbia; that the said act of Congress is consti-
33 tutional and the Congress of the United States is amply authorized by organic law to vest the appointment of the members of the Board of Education of the District of Columbia in a court of law; that the said act itself creates the Board of Education and merely delegates the appointment of its members to the said court of law; that the said delegation of appointment is not an imposition of duties upon the said court of law wholly nonjudicial for that the act required the consideration of certain qualifications in the appointees; that the power of appointment is not purely executive or administrative and is never such unless placed in the executive department of the government by specific lodgement therein by the act of Congress; that were it otherwise that the said defendants

have been continuously since the date of the said appointment, pursuant to the act approved June 20, 1906, and now are, the Board of Education *de facto* and have been recognized as such in all departments of the government and have control of the public schools of the said District; that the said complainant is estopped by reason of his actions in the premises as herein set out from questioning the right of these defendants as the Board to try him on the said charge, and that the said complainant has not shown in and by his said bill any right, title or interest to maintain the said bill or to procure the relief prayed for or any relief whatever.

And having fully answered the said defendants pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

G. W. BAIRD.
BARTON W. EVERMANN.
JAS. F. OYSTER.
34 W. V. COX.
ELLEN S. MUSSEY.
OLIVER M. ATWOOD.
JUSTINA R. HILL.
JOHN F. COOK.

STUART McNAMARA,
Attorney for Defendants.

DISTRICT OF COLUMBIA, *ss:*

George W. Baird, Oliver M. Atwood, John F. Cook, William V. Cox, Barton W. Evermann, Justina R. Hill, Ellen Spencer Mussey, James F. Oyster and Mary C. Terrell, being first duly sworn, on oath depose and say that they have read over the foregoing answer by them subscribed and know the contents thereof; that the matters and facts therein stated upon their personal knowledge are true, and those stated upon information and belief they believe to be true.

G. W. BAIRD.
BARTON W. EVERMANN.
JAS. F. OYSTER.
W. V. COX.
ELLEN S. MUSSEY.
OLIVER M. ATWOOD.
JUSTINA R. HILL.
JOHN F. COOK.

Subscribed and sworn to before me this 4" day of February, A. D. 1907.

JNO. R. YOUNG, *Clerk.*
R. P. BELEW, *Ass't Cl'k.*

35 *Decree.*

Filed February 8, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26833.

FRANCIS L. CARDOZO, Complainant,
against
GEORGE W. BAIRD and Others, Defendant-.

This cause having come on for consideration by the Court upon the bill of complaint and accompanying exhibits, the rule to show cause issued thereon, and the answer of the defendants, and having been argued by counsel and considered by the Court, and the said cause being submitted to the Court upon the said pleadings as on final hearing, it is, this 8th day of February, A. D. 1907, adjudged, ordered and decreed that the said rule to show cause be, and the same hereby is, discharged and that the said bill of complaint be, and the same hereby is, dismissed. And from this decree the complainant, in open court, prays an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the penalty of the bond for costs on the said appeal is hereby fixed at One Hundred dollars.

ASHLEY M. GOULD,
Associate Justice.

Memorandum.

February 12, 1907.—Appeal bond filed.

36 *Memorandum for Record on Appeal.*

Filed February 12, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26833.

FRANCIS L. CARDOZO, Complainant,
against
GEORGE W. BAIRD and Others, Defendants.

To the Clerk of the said Court:

We hereby designate the following to constitute the transcript of record on the appeal in the above entitled cause:

(1) The bill of Complaint and accompanying Exhibits;
(2) The Answer;
(3) The Decree;
(4) Memorandum of filing and approval of Bond.

HENRY E. DAVIS,
JAMES A. COBB,
Solicitors for the Complainant.

To Stuart McNamara, Solicitor for the defendants.

SIR: Please take notice of the foregoing designation for the transcript of record in the above entitled cause.

HENRY E. DAVIS,
JAMES A. COBB,
Solicitors for the Complainant.

Service of the foregoing acknowledged this 11 day of February A. D. 1907.

STUART McNAMARA,
Solicitor for Defendants.

37 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 36, both inclusive, to be a true and correct transcaipt of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 26833, in equity, wherein Francis L. Cardozo, is Complainant, and George W. Baird, *et al.*, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court. at the City of Washington, in said District, this 13th day of March, A. D., 1907.

[Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1769. Francis L. Cardozo, Appellant, *vs.* George W. Baird *et al.* Court of Appeals, District of Columbia. Filed Mar. 18, 1907. Henry W. Hodges, clerk.